

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SALVATORE CHIMENTI, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
PA DOC, <i>et al.</i> ,	:	NO. 15-03333
	:	
Defendants	:	

**DOC DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED
CLASS ACTION COMPLAINT WITH AFFIRMATIVE DEFENSES**

ADMITTED in part. **DENIED** in part.

1. It is admitted Plaintiffs Salvatore Chimenti, Daniel Leyva and David Maldonado are or were incarcerated within the PA DOC.
2. It is admitted the 3 Plaintiffs have the Hepatitis C viral infection.
3. It is admitted Plaintiff Chimenti is incarcerated at SCI-Smithfield.
4. It is admitted Plaintiff Leyva was incarcerated at SCI-Retreat.
5. It is admitted Plaintiff Maldonado was incarcerated at SCI-Graterford.
6. It is admitted Defendant Wetzel is the Secretary of the DOC.
7. It is admitted Defendant Noel is the Chief Medical Director of the DOC.
8. It is admitted Plaintiff Chimenti was diagnosed with Hepatitis C while incarcerated.

9. It is admitted Plaintiff Chimenti received anti-viral medications without success.

10. It is admitted Plaintiff Chimenti has received treatment with the latest FDA approved anti-viral medications.

11. It is admitted Plaintiff Leyva was diagnosed with Hepatitis C while incarcerated.

12. It is admitted Plaintiff Leyva received anti-viral medications without success.

13. It is admitted Plaintiff Leyva has been denied treatment with the latest FDA approved anti-viral medications.

14. It is admitted Plaintiff Maldonado was diagnosed with Hepatitis C while incarcerated.

15. It is admitted Plaintiff Maldonado received anti-viral medications without success.

16. It is admitted Plaintiff Maldonado has been denied treatment with the latest FDA approved anti-viral medications.

17. It is specifically denied PA DOC by policy and practice systematically deny or individually deny or refuse to provide necessary medical care for inmates with Hepatitis C viral infections consistent with current and prevailing medical

standards placing them at substantial and unnecessary risk for severe illness, injury, irreparable harm and death.

18. It is specifically denied DOC Defendants were deliberately indifferent, violated the federal or state constitutions or were professionally negligent.

19. DOC Defendants generally deny the remaining allegations not specifically admitted.

20. Also, DOC Defendants lack knowledge or information sufficient to form a belief about the truth of certain material factual allegations contained in the class action complaint not specifically admitted.

21. As to the non-material factual allegations, no response is required as to Plaintiffs' interpretations, arguments, legal conclusions or non-factual statements and assertions.

22. DOC Defendant Wetzel was not personally involved with Plaintiffs' medical care for Hepatitis C.

23. DOC issued an updated DOC Hepatitis C Protocol for the treatment of inmates with Hepatitis C in November 2016.

24. During the relevant time period and continuing forward, Plaintiffs received treatment for their Hepatitis C in the form of diagnosis, testing, monitoring and in some cases the latest FDA approved anti-viral drugs.

WHEREFORE, DOC Defendants request that Plaintiffs' First Amended Class Action Complaint be dismissed and judgment be entered in favor of the DOC Defendants and against the Plaintiffs, along with costs, attorney's fees and expenses and any other relief deemed necessary.

AFFIRMATIVE DEFENSES

1. The Class Action Complaint fails to state a claim or cause of action pursuant to 42 U.S.C. § 1983 ("Section 1983") or state law, upon which relief can be granted.

2. Plaintiffs failed to properly exhaust available administrative remedies pursuant to the Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997e(a).

3. The DOC Defendants assert each and every defense available under the existing Civil Rights Act of 1964, 42 U.S.C. § 1983.

4. The DOC Defendants assert all limitation upon the Plaintiffs' claims set forth in the Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997e.

5. The DOC Defendants assert all defenses set forth in the Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997e.

6. The Plaintiffs has failed to establish that the DOC Defendants had the requisite state of mind for any of the alleged constitutional violations, including deliberate indifference and cruel and unusual punishment. However, if it is

judicially determined otherwise, the DOC Defendants never had the subjective knowledge that the alleged actions presented a substantial risk of harm to the Plaintiffs and the DOC Defendants at all times reasonably believed that they had not clearly violated the Plaintiffs' constitutional rights.

7. DOC Defendants lacked personal or direct involvement in any of the alleged violations of Plaintiff's rights.

8. The DOC Defendants acted at all times within the scope of his authority, in good faith, and without malice and therefore are entitled to qualified immunity.

9. To the extent that Plaintiffs have pled a state law claim, this Court cannot assume pendant jurisdiction over any claim premised on state law as the DOC Defendants are immune from suit in Federal court by reason of the Eleventh Amendment.

10. To the extent that Plaintiffs have pled a state law claim; such claims are barred by sovereign immunity and not waived by any of the exceptions thereto. 1 Pa.C.S. § 2310, 42 Pa.C.S. § 8522.

11. To the extent that sovereign immunity has been waived with respect to any of Plaintiffs' claims, DOC Defendants assert all defenses and limitations upon those claims which are or may hereafter be set forth at 42 Pa.C.S. §§ 8522-8528.

12. DOC Defendants are entitled to official immunity from Plaintiffs' claims.

13. Any and all damage or injury allegedly sustained by Plaintiffs resulted not from the conduct or acts of the DOC Defendants, but from the conduct or acts of Plaintiffs or other persons.

14. Any actions or inactions taken by the DOC Defendants were matters within the discretion granted to the DOC Defendants by statute, regulation or directive and therefore the Defendants are immune from suit.

15. The DOC Defendants affirmatively plead any other matter constituting avoidance or affirmative defense.

16. The acts or omissions of the DOC Defendants that were alleged to constitute deliberate indifference, cruel and unusual punishment, were not substantial causes or factors in the alleged injuries sustained by the Plaintiffs.

17. Declaratory relief is unavailable to merely to have the Court declare that past actions of the DOC Defendants have violated Plaintiffs' rights.

18. Injunctive relief is unavailable where Plaintiffs request for relief is moot.

19. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.

20. Some or all of Plaintiffs lack standing.

WHEREFORE, DOC Defendants request Plaintiffs' First Amended Class Action Complaint be dismissed and judgment be entered in favor of DOC Defendants and against the Plaintiffs, along with costs, attorney's fees and expenses and any other relief deemed necessary.

Respectfully submitted,

By: /s/ Vincent R. Mazeski
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Dated: September 22, 2017

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CERTIFICATE OF SERVICE

I hereby certify that the within Answer with Defenses has been filed electronically and is available for viewing and downloading from the ECF system by Counsel for Plaintiffs and Counsel for Medical Defendants and therefore satisfies the service requirements under *Fed.R.Civ.P. 5(b)(2)(E)*; *L.R. 5.1.2 8(a)*.

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Dated: September 22, 2017